

Schary, Claire

From: Schary, Claire
Sent: Friday, July 26, 2013 9:41 AM
To: Psyk, Christine; Stewart, William C.
Subject: FW: Article Mentioned at July 25 TAC Meeting (this morning)
Attachments: Bodine-TWR#113.pdf; Circular DEQ 13 - Dec 2012.pdf; DraftTradingPolicyRespComm10_11[1].pdf

FYI – Marti Bridges is responding to Dave Tuthill’s message (below) that included the attached article (which I haven’t read yet but will shortly). I thought I got through to Dave T. about the importance and non-negotiability of ag making a contribution to meeting the Load Allocation as a condition of trading, when I spent so much time talking to him at the conference in Vancouver, BC in June. I guess not.

Marti is correct about the Montana program relying on a variance. I looked into it earlier when there was an article about the Montana program. I’m attaching both Montana DEQ’s proposed approach to trading and then the response to comments document that also includes Region 8’s comment (on page 5) – and which I’m also copying here. I don’t agree with Region 8’s statement that the load allocation must be met prior to a point source being allowed to use the credits, but I think we agree on the underlying principle that trading needs to support meeting load allocations.

COMMENT 1: It is EPA’s understanding that the draft policy defines baseline in a manner that allows nonpoint sources to generate credits as soon as they begin to reduce their nutrient load. These credits would then be available for purchase by point sources assigned a waste load allocation. Because the reductions achieved by the nonpoint source would be counted twice (i.e., as an actual reduction towards meeting a load allocation and as a credited reduction towards meeting a waste load allocation), the net result of this transaction is to allow discharges from point and nonpoint sources that exceed the loading capacity identified in the TMDL. Since any exceedance of the loading capacity of a TMDL results in a violation of water quality standards, EPA believes that allowing a permittee to use credits generated by a nonpoint source prior to meeting the load allocation in a TMDL is contrary to its rules that prohibit the issuance of an NPDES permit that violates state water quality standards.

RESPONSE: DEQ does not agree that allowing nonpoint sources to generate credits as soon as they begin to reduce their nutrient load will result in a violation of EPA’s rules governing the issuance of NPDES permits. DEQ currently issues permits that require a point source to meet the WLA in a TMDL without also requiring all nonpoint sources to meet the load allocation assigned to them in the TMDL. So far, EPA has not objected to any of these permits as violating its rules prohibiting the issuance of a permit that will exceed state water quality standards. It defies logic that EPA would find that the issuance of a permit that relies on a nonpoint source’s actual reduction toward meeting a load allocation would have a worse environmental effect than no reduction of a load allocation at all.

Since there is no mechanism in law that requires nonpoint sources to even begin to reduce their load allocation, the draft trading policy allows nonpoint sources to generate saleable credits as soon as they begin the process. DEQ believes that allowing the voluntary reduction of nutrients by nonpoint

-- Claire

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From: Marti.Bridges@deq.idaho.gov [mailto:Marti.Bridges@deq.idaho.gov]
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To: cochran@willamettepartnership.org; primozich@thefreshwatertrust.org; Schary, Claire
Subject: FW: Article Mentioned at July 25 TAC Meeting (this morning)

The push is already on to set baseline as low as possible, just because of a perception that Montana has. We aren’t Montana. We aren’t Region 8, who in my opinion allowed for some of the worst examples of trading in Colorado. And there is no mention that trading in Montana relies upon granting a 20 year variance under NPDES permits for nutrient

trading. They also, last I knew, don't allow a mixing zone for streams that are impaired for pollutants typically. We have already had pushback about even suggesting we'd let someone NOT trade a project put in 20 years ago or 5 years ago.

Bobby, please be prepared to help articulate the thinking on this nationally and our Region 10 states, at our workshop in August. I know you'll also be meeting with the WAG again in September. And also the Treasure Valley Partnership. We need to get out in front of this. And we need some group agreement. We weren't able to stall another state agency, our Soil and Water Cons Commission, from meeting before the workshop. They have made it known to me that they don't want to be involved in "verifying" trades because it is regulatory and conflicts with their confidentiality agreement they signed with USDA. I wonder how many other states have agencies who have signed those kind of agreements? Talk about hamstringing transparency. There is, of course, no reason we can't revise our trading guidance based upon Lower Boise trading demonstration documents that suggested their role.

I will say this, Barry Burnell is in agreement that while we want to encourage trades involving non point sources, he also agrees that allowing someone to count things they already installed in baseline is not wise, and is simply part of their contribution of being the good farmer they should have been to begin with. I'm paraphrasing here.

We seem to have a lot of the "feeding at the public trough" mentality now that no farm bill has passed and also since Congress seems bent on using trading somehow as a way to replace subsidy payments. Trading is the coping saw of the tool box of tools. It has a use, but it is very specific. You use the right tool for the job. Trading is not going to be a hammer and a nail, or screwdriver so far as I can see, and I've been using this analogy increasingly.

Also, Claire, I've been talking with Bruce Smith, and he'll be at the meeting. He may be interested and willing to reconvene the Idaho Clean Water Cooperative. And that could be a good thing. He'll sound counsel (being an attorney and all) on how to charge appropriately for managing trade tracking, verification etc. As an FYI he represents one of the litigants against City of Boise getting their water right. I'm pretty sure I know who, but...

He's still a bit miffed EPA didn't give him a grant to get the Cooperative up and running. Maybe that would be an appropriate thing to look into again.

Happy Friday all. I look forward to seeing everyone in August. Bring your swim suits, as there is an outdoor pool where you're staying and if it remains in the 90's or more, you'll be glad you did.

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From: Dave Tuthill [<mailto:dave@idahowaterengineering.com>]

Sent: Thursday, July 25, 2013 5:12 PM

To: Troy Smith; addison_mohler@fws.gov; ajw@moffatt.com; alayne@horsesforcleanwater.com; aetherid@usgs.gov; alokevaid@gmail.com; andy@holladayengineering.com; aweigel@brwncald.com; Barry Burnell; basil@holladayengineering.com; bbraun@amalsugar.com; Cope.Ben@epamail.epa.gov; bnydegger@cityofboise.org; stewart.williamc@epamail.epa.gov; bill.carr@unitedwater.com; bill@claytontreefarm.com; brandy.wilson@ch2m.com; bhoelscher@idahopower.com; brian_raybon@crapo.senate.gov; casey@nampahighway1.com; cba@msa-ep.com; cbratz@brwncald.com; cbusche@cityofboise.org; cellestad@pharmereng.com; chipwell@pharmereng.com; clerks@cityofnampa.us; cdolsby@meridiancity.org; clay@usbr.gov; commissioner@canyonco.org; dan@sawtoothlaw.com; dana@idahowaterlaw.com; DKeil@spfwater.com; delwyne.trefz@swc.idaho.gov; dferdinand@canyonco.org; dgfisher@micron.com; dilippegge@mwhglobal.com; dondel64@q.com; demacoy@usgs.gov; drjonestwf@msn.com; drvaid@xlfourstar.com; dsearle@amalsugar.com; edwin.f.cryer@mwhglobal.com; Beth Elroy; Ellen.M.bergren@usace.army.mil; Emaguire@achdidaho.org; gary.bahr@agri.idaho.gov; greg.vitley@itd.idaho.gov; gmclark@usgs.gov; hal@idahowaterengineering.com; haley.falconer@hdrinc.com; Hawk Stone;

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Subject: Article Mentioned at July 25 TAC Meeting (this morning)

All,

During the Boise River TMDL TAC meeting this morning, I mentioned the State of Montana is considering using a baseline of 0% for water quality trading. I read the following quote to the group:

In response to comments from EPA on its trading policy, the Montana Department of Environmental Quality (MDEQ) takes a position that is similar to the Madison Metropolitan Sewerage District. MDEQ's draft trading policy defines baseline in a manner that allows a nonpoint source to generate credits as soon as it begins to reduce its nutrient load without first meeting the load allocation assigned to the nonpoint source. MDEQ points out that the nonpoint source reductions are voluntary. (p.5)

After the meeting some people asked for copies of the reference. I have obtained permission from the publisher to circulate the article, titled "Nutrient Trading & Water Quality" by Susan Bodine Parker, published in the July 15, 2013 edition of The Water Report. The publisher provided a camera-ready version, attached.

We think the Montana approach makes sense, if what we really want to do is jump-start significant reductions in non-point nutrient loads.

We welcome the discussion on this issue and look forward to the IDEQ/Willamette Partnership Open House on Water Quality Trading on August 22nd.

Regards,

Dave

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